

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

HOW TO FILE YOUR ACTION IN FEDERAL COURT (Instructions for Non-Prisoner Complaint)

Check the Western District's web site at www.nywd.uscourts.gov for copies of many of the Court's forms and other useful information.

IMPORTANT: This packet includes the complaint forms and additional materials you have requested. Although you are not required to submit your complaint on the complaint form, **you must provide all the information requested on that form.** If you choose not to use the official form, **be sure that you provide all the information that is requested on the official form and that you enclose the proper number of correctly filled out supporting documents.** If your papers are not properly completed and/or if you do not send enough copies of documents, your papers will be returned to you for correction of any deficiencies.

I. COMPLAINT FORM

- A. To start an action, you must file an **original** complaint, plus an exact copy of your complaint for each defendant you name, and one extra copy. For example, if you name two defendants, you must file the original and three copies of the complaint (one original, plus a copy for each of the two defendants plus one extra copy). **All copies of the complaint must be identical to the original.** You should also keep an additional copy of the complaint for your records.
- B. Your complaint must be legibly handwritten or typewritten, in blue or black ink if possible, preferably on the enclosed forms. If you need additional space to answer a question, you may attach additional pages. However, additional pages should be used only if absolutely necessary; **your complaint should be specific but as brief as possible.** Please refer to Rules 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure for the requirements governing the format and content of your complaint. Failure to comply with these requirements may lead to a Court order rejecting your complaint until it does comply.
- C. **Section 1: Caption** — This section requires you to list your name as the plaintiff and the names of all of the defendants. **Do not use abbreviations such as "etc." or "et al."** Also, note that **only** those defendants whose names are listed in this Section (or in the caption if you do not use the official forms) will be considered by the Court as defendants.
- D. **Section 2: Statement of Jurisdiction, Venue and Nature of Suit** — Federal Court is a court of limited jurisdiction and thus only certain types of cases may be brought in this Court. Therefore, this section requires you to identify the basis for your bringing this action in federal court. It also requires you to state why you have brought it in this particular federal court (why venue is proper in the Western District). You must also describe the

nature of your suit. If you do not use the official forms, your complaint must have a section which contains all of this information.

- E. **Section 3: Parties to This Action** — This section requires you to identify the parties to the lawsuit. (You should set out in Section 1: Caption only the parties' names and perhaps their titles (such as Dr. or Commissioner)). In Section 3: Parties, you must provide each party's name, official position (if relevant) and address, and if you are seeking service by the U.S. Marshals, you may provide any other information which may assist in identifying or locating the parties. If you do not use the official forms, your complaint must have a section which identifies and locates the parties in this way.
- F. **Section 4: Previous Lawsuits** — This section requires you to provide detailed, accurate and thorough information about all previous lawsuits you have filed regarding the same facts involved in this case. If you cannot provide **all** of the details requested, you must provide as much information as you can. **Deliberate misrepresentation or omission of information is perjury and is punishable by law.**
- G. **Section 5: Statement of Claim** — This section, which is divided into separate sub-sections for each claim, requires you to tell the Court when each alleged incident occurred, which defendant(s) were involved and specifically what each of the defendant(s) did to you. You must provide specific facts regarding each claim; these facts should demonstrate to the Court how your rights were violated and by whom they were violated. **You must give facts only.** Please refer again to Rule 8(a)(2) and 10(b) of the Federal Rules of Civil Procedure regarding how to present your claim. **Your complaint must not contain legal arguments or case citations.**
- You must also state the federal basis for each claim (such as the U.S. Constitution, a specific federal statute, diversity jurisdiction or pendent jurisdiction), and describe what relief you are seeking for each claim.
- H. If you wish a jury trial, check "yes" on the last page of the complaint form (and check "yes" in the JURY DEMAND box on the Civil Cover Sheet.) If you do not use the official forms, you must state in the body of your complaint that you demand a jury trial.
- I. Sign the complaint before a notary public, if one is available to you. If not, your signature at the end of your complaint under penalty of perjury is adequate.
- J. **Amended Complaints** — **An amended complaint completely replaces your original complaint** and must therefore include all of the necessary allegations. You may file one **amended complaint** as of right at any time before an answer to the original complaint is served. You may also be instructed by the Court to file an amended complaint. If you wish to amend after an answer has been filed, you may do so either by obtaining permission of all other parties to the action or by bringing a motion asking the Court for permission to amend.

Refer to Rule 15(a) of the Federal Rules of Civil Procedure for the requirements for amended complaints.

- K. **Supplemental Complaints** — You may file a **supplemental complaint** only if you **request permission of the Court by motion with notice to the opposing parties**. A supplemental complaint may only address events which have occurred since the time the original complaint was filed and which are in some way related to the original allegations. Refer to Rule 15(d) of the Federal Rules of Civil Procedure for the requirements for supplemental complaints.

II. FILING FEES AND "POOR PERSON'S STATUS" *Refer to 28 U.S.C. § 1915.*

- A. In order to file the completed complaint and other necessary papers, you must submit a \$150.00 money order, certified check, official check, or personal check made out to "Clerk, United States District Court". If you file in person, you may pay in cash.
- B. **If you are unable to pay the fee at the time of filing**, you may apply for poor person's status. This status will permit you to initiate your action without payment of the filing fee.
- C. To request poor person's status, you must fill out the Motion to Proceed *In Forma Pauperis* and Supporting Affidavit (available from the Clerk's Office or the Western District web site) and submit one original to the Clerk of Court along with your complaint.

III. CIVIL COVER SHEET

Fill out the "Civil Cover Sheet" form according to these instructions:

- A. Put your name and prisoner number, if applicable, as "Plaintiff";
- B. Put all the defendants' names as "Defendants" (use a second sheet if necessary);
- C. Fill in your county and one defendant's county;
- D. Under "Plaintiff's Attorney" put "Pro Se", your name, prisoner number, if applicable, and address;
- E. Leave "Defendant's Attorney" blank;
- F. Under "Basis of Jurisdiction", check whichever one is appropriate;
- G. Under "Cause of Action", identify the federal statute under which your claim arises;
- H. Under "Nature of Suit", check the appropriate box;
- I. Under "Origin", check box 1: "Original Proceeding";

- J. Under "Citizenship of Principal Parties", leave blank **unless** the basis of jurisdiction is diversity jurisdiction, in which case you must identify the state/citizenship of all plaintiff(s) and defendant(s);
- K. Under "Requested in Complaint", write in the amount of money or other relief you are suing for and check the appropriate box after "jury demand" (see discussion above);
- L. List all previously-filed cases, together with their docket numbers, the courts in which they were venued, the approximate dates they were filed and their dispositions, using a separate sheet if necessary; and
- M. Date the form and sign your name, followed by "Pro Se" on the last line.

IV. **THE SUMMONS FORM**

Fill out the Summons in a Civil Action forms (one original and a copy for each defendant).

- A. Write your name above the "v" as plaintiff; write in the names of all the people you are suing as defendants below the "v".
- B. Write the name and address of one defendant after the "To". **You must make a separate summons for each defendant.**
- C. Because you do not have an attorney, in the space after "plaintiff's attorney" fill in your own name and address. Cross out "Plaintiff's Attorney" and write "Pro Se" after your name.
- D. Put "20" in the space before "days after service of this summons" **Note** that the 20 days for answering does not begin to run until the complaint has actually been served on the defendant, **not** 20 days after the complaint has been filed in the Court. **Also note** that if you are suing the federal government, the number to put in the space is "60".

V. **FILING YOUR COMPLAINT**

Once your papers are complete, bring or mail them to the Court Clerk's Office, at one of the addresses listed in Part VIII of these instructions. Upon receipt, your complaint will be assigned a docket number and a judge. You will receive notice of this. **If you have applied for permission to proceed *in forma pauperis* (see 28 U.S.C. § 1915), you may not cause copies of your papers to be served on any named defendant, either by yourself or at your request by the United States Marshals Service, until the Court directs service of the complaint.**

VI. SERVICE OF FORMS *Refer to Rule 4 of the Federal Rules of Civil Procedure.*

If you apply for permission to proceed *in forma pauperis* and the Court grants your request, the United States Marshal will, at the Court's direction, serve the summons and complaint upon each defendant. If the Court grants your application to proceed *in forma pauperis*, you will receive the correct number of U.S. Marshal Process Receipt and Return forms together with instructions for completing them.

If you do not apply for or receive permission to proceed *in forma pauperis*, you may choose to serve the summons and complaint yourself. (This does not mean by you directly however; as a party to the action, you are prohibited from serving the papers yourself.) After you file your action with the Court, have a friend (or hire a professional process server) take or mail a copy of the summons and complaint to each defendant. Remember that no papers can be served until you have either paid the filing fee, or until you have applied for and been granted *in forma pauperis* status as described in Part II of these instructions.

- (1) If the summons and complaint are personally served, the server must be over 18 years of age, and not a party to the action. After handing the summons and complaint to a defendant, the server **must** complete and file an Affidavit of Service, stating the date and time of service and describing the person who was served.
- (2) If the server chooses to use the Waiver of Service provisions of Fed.R.Civ.P. 4(d), follow the instructions in the Rule carefully and prepare a Notice and a Waiver form according to the model Forms 1A and 1B in the Appendix of Forms to the Federal Rules of Civil Procedure.

If you are not proceeding as a poor person, you may arrange for the United States Marshal to serve your papers for a fee of \$8.00 per defendant. **Note:** The Marshal will only serve your complaint if you **first** obtain a judicial order directing such service. If you want the Marshal to serve your summons and complaint, obtain an Application for Order Directing Service by U.S. Marshal from the Clerk's Office or the Western District web site, complete it, and send it to the Clerk of the Court, who will forward it to the Judge to whom your case has been assigned for approval. When the Judge signs your order, you will be mailed a copy. Take or send a copy of the signed order to the Marshal, with your summonses and copies of your complaint, and they will assist you with further arrangements.

No matter which method of service you choose, Rule 4(m) of the Federal Rules of Civil Procedure requires that **service of both the summons and complaint must be made within 120 days after the filing of the complaint.** Failure to comply with this deadline may result in dismissal of your action.

If the Marshal fails to complete service upon the first attempt, it is your responsibility to require the Marshal to try to serve again, or to move the Court for an order directing the Marshal to make a second attempt.

VII. GENERAL INFORMATION

- A. Your complaint can be filed in this Court **only** if one or more of the named defendants is located within the Western District of New York, or if the action occurred in the District pursuant to 28 U.S.C. § 1391. Further, it is necessary for you to start a separate action and file a **separate** complaint for **each claim** that you have **unless they are all related to the same incident or issue**.
- B. Except for your complaint, after an answer has been served **you must send a copy of every legal paper that you send to the Court to all other parties' attorneys as well**, and you must include an affidavit or affirmation of service with the original of the document which is filed with the Court. This is evidence that you have served the papers on your opposition. Failure to do so will result in your papers being refused for filing. (If you are proceeding *in forma pauperis*, the United States Marshal will serve **only** your complaint on the defendants. You are responsible for sending all subsequent papers to the other parties' attorneys yourself. The District Court will not make copies for you nor will it send copies to other parties for you.) If you are unable to make photocopies or carbon copies, you may submit **identical** handwritten copies.

You may obtain forms for filing motions and for the Affidavit/Affirmation of Service from the Clerk of the Court or the Western District web site.

- C. Requests for assigned counsel may be made pursuant to 28 U.S.C. § 1915(e)(1). The Court will attempt to appoint counsel in appropriate cases, but generally only after the plaintiff's allegations have demonstrated some degree of merit to the Court, some need for such representation, and that plaintiff has already made some unsuccessful effort to locate an attorney. Denial of requests for appointment of counsel before such time shall be without prejudice to renewal after the case has progressed closer to trial.

You may obtain a form for requesting counsel from the Clerk of the Court or the Western District web site.

- D. You **must** notify the Clerk's Office and all defendants (or their attorneys) **immediately** of any address changes. **Failure to do so may result in dismissal of your action pursuant to Local Rule of Civil Procedure 5.3(d).**
- E. The Clerk of Court will not file your complaint unless it conforms to these instructions pursuant to Local Rules of Civil Procedure 5.2 and 5.3.

- F. After your complaint has been filed, all legal pleadings submitted to the Court in your case must include your case (docket) number and a signed statement that you have sent a copy of your pleadings to each defendant or the defendant's attorney(s) known as the Affidavit/Affirmation of Service.

You may obtain a form for the Affidavit/Affirmation of Service from the Clerk of the Court or the Western District web site.

- G. If there is more than one plaintiff, each and every plaintiff **must** sign the complaint individually and must apply separately for permission to proceed *in forma pauperis*, if applicable. After the complaint has been filed, one plaintiff may submit a document to be filed on behalf of all the plaintiffs **only if the other plaintiffs have signed a statement giving that plaintiff the authority to submit documents on all plaintiffs' behalf. Otherwise, each plaintiff must sign every document submitted to the Court.**

VIII. MAILING INSTRUCTIONS

Finally, bring or mail all of the papers to one of the following addresses:

United States District Court Clerk
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614-1387
(716) 263-6263

United States District Court Clerk
304 U.S. Courthouse
68 Court Street
Buffalo, New York 14202-3498
(716) 551-4211 or (716) 551-5759

IX. PRO SE STAFF ATTORNEYS

If you have general questions about procedures, you may contact the Pro Se Staff Attorneys at one of the above addresses for information. You may also ask the Pro Se Staff Attorneys for current information about how to obtain forms from the Court web site and how to access the Federal Rules and other legal information on the Internet. (Most public libraries now offer Internet access to library patrons.)

NOTE: The Pro Se Staff Attorneys can only provide technical and procedural information and certain forms such as for filing motions and affirming service; they cannot assist you with the substantive law governing your lawsuit or give you legal advice about your case.